

agent may no longer rely on a certification that an amount is not subject to tax under section 4948 beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is subject to tax under section 4948 or the date on which the IRS gives notice that such foreign organization is a private foundation within the meaning of section 509(a).

(c) *Failure to receive withholding certificate timely and other applicable procedures.* See applicable procedures described in § 1.1441-1(b)(7) in the event the withholding agent does not hold a valid withholding certificate or other appropriate documentation at the time of payment. Further, the provisions of § 1.1441-1(e)(4) shall apply to withholding certificates and other documents related thereto furnished under the provisions of this section.

(d) *Effective date—(1) In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of a Form W-8, 1001, or 4224 or a statement that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W-8, 1001, or 4224 or a statement that is valid on or after January 1, 1999 remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such form or statement remain valid after December 31, 2000. The rule in this paragraph (d)(2), however, does not apply to extend the validity period of a Form W-8, 1001, or 4224 or a statement that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (d)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (d)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to

require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

[T.D. 8734, 62 FR 53465, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72185, Dec. 31, 1998; T.D. 8856, 64 FR 73410, Dec. 10, 1999; T.D. 8881, 65 FR 32201, May 22, 2000]

**§ 1.1441-10 Withholding agents with respect to fast-pay arrangements.**

(a) *In general.* A corporation that issues fast-pay stock in a fast-pay arrangement described in § 1.7701(l)-3(b)(1) is a withholding agent with respect to payments made on the fast-pay stock and payments deemed made under the recharacterization rules of § 1.7701(l)-3. Except as provided in this paragraph (a) or in paragraph (b) of this section, the withholding tax rules under section 1441 and section 1442 apply with respect to a fast-pay arrangement described in § 1.7701(l)-3(c)(1)(i) in accordance with the recharacterization rules provided in § 1.7701(l)-3(c). In all cases, notwithstanding paragraph (b) of this section, if at any time the withholding agent knows or has reason to know that the Commissioner has exercised the discretion under either § 1.7701(l)-3(c)(1)(ii) to apply the recharacterization rules of § 1.7701(l)-3(c), or § 1.7701(l)-3(d) to depart from the recharacterization rules of § 1.7701(l)-3(c) for a taxpayer, the withholding agent must withhold on payments made (or deemed made) to that taxpayer in accordance with the characterization of the fast-pay arrangement imposed by the Commissioner under § 1.7701(l)-3.

(b) *Exception.* If at any time the withholding agent knows or has reason to know that any taxpayer entered into a fast-pay arrangement with a principal purpose of applying the recharacterization rules of § 1.7701(l)-3(c) to avoid tax under section 871(a) or section 881, then for each payment made or deemed

## Internal Revenue Service, Treasury

## § 1.1443-1

made to such taxpayer under the arrangement, the withholding agent must withhold, under section 1441 or section 1442, the higher of—

(1) The amount of withholding that would apply to such payment determined under the form of the arrangement; or

(2) The amount of withholding that would apply to deemed payments determined under the recharacterization rules of § 1.7701(l)-3(c).

(c) *Liability.* Any person required to deduct and withhold tax under this section is made liable for that tax by section 1461, and is also liable for applicable penalties and interest for failing to comply with section 1461.

(d) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* REIT W issues shares of fast-pay stock to foreign individual A, a resident of Country C. United States source dividends paid to residents of C are subject to a 30 percent withholding tax. W issues all shares of benefited stock to foreign individuals who are residents of Country D. D's income tax convention with the United States reduces the United States withholding tax on dividends to 15 percent. Under § 1.7701(l)-3(c), the dividends paid by W to A are deemed to be paid by W to the benefited shareholders. W has reason to know that A entered into the fast-pay arrangement with a principal purpose of using the recharacterization rules of § 1.7701(l)-3(c) to reduce United States withholding tax. W must withhold at the 30 percent rate because the amount of withholding that applies to the payments determined under the form of the arrangement is higher than the amount of withholding that applies to the payments determined under § 1.7701(l)-3(c).

*Example 2.* The facts are the same as in *Example 1* of this paragraph (d) except that W does not know, or have reason to know, that A entered into the arrangement with a principal purpose of using the recharacterization rules of § 1.7701(l)-3(c) to reduce United States withholding tax. Further, the Commissioner has not exercised the discretion under § 1.7701(l)-3(d) to depart from the recharacterization rules of § 1.7701(l)-3(c). Accordingly, W must withhold tax at a 15 percent rate on the dividends deemed paid to the benefited shareholders.

(e) *Effective date.* This section applies to payments made (or deemed made) on or after January 6, 1999.

[T.D. 8853, 65 FR 1312, Jan. 10, 2000]

### § 1.1442-1 Withholding of tax on foreign corporations.

For regulations concerning the withholding of tax at source under section 1442 in the case of foreign corporations, foreign governments, international organizations, foreign tax-exempt corporations, or foreign private foundations, see §§ 1.1441-1 through 1.1441-9.

[T.D. 8734, 62 FR 53466, Oct. 14, 1997]

### § 1.1442-2 Exemption under a tax treaty.

For regulations providing for a claim of reduced withholding tax under section 1442 by certain foreign corporations pursuant to the provisions of an income tax treaty, see § 1.1441-6.

[T.D. 8734, 62 FR 53466, Oct. 14, 1997]

### § 1.1442-3 Tax exempt income of a foreign tax-exempt corporations.

For regulations providing for a claim of exemption for income exempt from tax under section 501(a) of a foreign tax-exempt corporation, see § 1.1441-9. See § 1.1443-1 for withholding rules applicable to foreign private foundations and to the unrelated business income of foreign tax-exempt organizations.

[T.D. 8734, 62 FR 53466, Oct. 14, 1997]

### § 1.1443-1 Foreign tax-exempt organizations.

(a) *Income includible under section 512 in computing unrelated business taxable income.* In the case of a foreign organization that is described in section 501(c), amounts paid to the organization includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding under §§ 1.1441-1, 1.1441-4, and 1.1441-6 in the same manner as payments of the same amounts to any foreign person that is not a tax-exempt organization. Therefore, a foreign organization receiving amounts includible under section 512 in computing the organization's unrelated business taxable income may claim an exemption from withholding or a reduced rate of withholding with respect to that income in the same manner as a foreign person that is not a tax-exempt organization. See § 1.1441-9(b)(3) for presumption that amounts are includible under section